

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION**

TIMOTHY D. GUMM,	*	
Petitioner,	*	
v.	*	CASE NO. 6:07-CV-27 (WLS)
STATE OF GEORGIA,	*	28 U.S.C. § 2254
		Habeas Corpus Petition
Respondent.	*	

REPORT AND RECOMMENDATION

_____Petitioner's Application for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, is before this court for preliminary consideration under Rule 4 of the Rules Governing Section 2254 Proceedings For The United States District Courts. After preliminary examination, it appears that Petitioner's Application for Federal Writ of Habeas Corpus under 28 U.S.C. § 2254 is subject to summary dismissal.

A review of Petitioner's previous filings reveals that the current § 2254 application is Petitioner's second attempt at federal habeas relief for his November 15, 1994, conviction for Burglary, Kidnaping with Bodily Injury, Rape, two counts of Possession of a Knife during the commission of a crime, and Aggravated Sodomy, wherein Petitioner was sentenced to serve two consecutive life sentences, two concurrent twenty year sentences and a consecutive five year sentence for the convictions.¹ In the previous case, the Court denied Petitioner's application for federal habeas relief on September 20, 1999. Petitioner sought

¹ The court takes notice of it own previous Case Number 6:1998-CV-6.

a Certificate of Appealability in the Eleventh Circuit Court of Appeals, which was denied on April 6, 2000.

_____ Title 28, U.S.C. § 2244(b)(3)(A) provides that “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” Therefore, this Court is without jurisdiction to review Petitioner’s § 2254 petition until such time as the Eleventh Circuit Court of Appeals grants his motion to file a second or successive petition.

Petitioner’s present petition for writ of habeas corpus having been presented without proper authorization pursuant to 28 U.S.C. § 2244(b)(3)(A), Petitioner’s motion to proceed *In Forma Pauperis* is DENIED.

WHEREFORE, IT IS HEREBY RECOMMENDED that Petitioner’s present action be DISMISSED WITHOUT PREJUDICE for Petitioner to seek authorization from the Eleventh Circuit Court of Appeals to file a second or successive petition. Pursuant to 28 U.S.C. § 636 (b)(1), Petitioner may serve and file written objections to this Recommendation with the United States District Judge WITHIN TEN (10) DAYS after being served with a copy hereof.

SO RECOMMENDED, this 7th day of June, 2007.

eSw

S/ G. MALLON FAIRCLOTH
UNITED STATES MAGISTRATE JUDGE